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In the Supreme Court of the United States

OCTOBER TERM, 1955.

No. 192

NOVAK N. MARKU,

Petitioner,

vs.

THE UNION & LEAGUE OF ROMANIAN SOCIETIES OF AMERICA, INC., *et al.*,

Respondents.

BRIEF FOR RESPONDENTS
In Opposition to Petition For a Writ of Certiorari To the Supreme Court of Ohio.

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To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States.

The Respondents, The Union & League Romanian Societies of America, Inc., et al., as its reply to petitioner's Writ of Certiorari to review an order and judgment of the Supreme Court of Ohio rendered in this cause on January 19, 1955, presents the following:

QUESTIONS PRESENTED.

1. Can a Non-Profit Corporation organized under the Fraternal Benefit Insurance Laws of the State of Ohio require its members to execute a loyalty affidavit in conformity with its Articles of Incorporation, Constitution and By-Laws.

2. May such an organization take disciplinary action by passivity, suspension of rights or by expulsion from the organization, punish its members for failure to comply with its Constitution and By-Laws.

STATEMENT OF FACTS.

The Statement of Facts as presented by petitioner are partially accurate and therefore we feel that in order that the Court know the established facts it should be pointed out that any changes in the affidavit as submitted in December of 1951, as referred to on page 6 of Petition for Writ of Certiorari were made by the national officers with the approval of the Executive Committees held in 1951 and that the new provisions, 4, 5 and 6 of the affidavit referred to on page 7 to Petition of Writ of Certiorari were a part in substance of the Constitution and By-Laws of the Union & League.

The Carpatina Lodge was not refused permission to vote for the national officers as stated on page 8 of Petitioner's Writ of Certiorari, arbitrarily, but that the Carpatina Society was permitted to state its case as provided in the Constitution and By-Laws under the program of the Convention and that the Carpatina Lodge did have ample notice of hearing by the Grievance Committee of the Convention and that John R. Vintilla, Attorney for petitioner herein, was one of the representatives of the Carpatina Lodge at the meeting of the Grievance Committee.

Further, all of the twenty-five officers who were charged had been represented by John R. Vintilla, at least at two of the Executive Committee meetings held prior to the Lorain, Ohio, Convention in September, 1952, and at that Convention, he represented them before the Grievance Committee.

During the convention, John R. Vintilla, as representative for the Carpatina Lodge and the twenty-five officers was permitted to make his statement in defense of their conduct, as a Society and as individuals.

On page 10 of Petitioner's Writ of Certiorari, second and third paragraphs, petitioner states that notice was sent to the Canton Society to send one or two delegates who would represent the Canton Society at the Executive Committee. The petitioner presented himself as a delegate and representative of the Canton Society and was not permitted to speak or be heard in behalf of said Society and/or for himself on his appeal.

The facts are: He had appeared at nearly every Executive Committee meeting of the Union & League since 1948 because of some violation of the Constitution and By-Laws of the Union & League and he was given an opportunity to speak therein and he was present at the last Executive Committee meeting. Therefore, his appeal could not be considered to change the prior rulings.

Further, as set out on page 12 of Petition of Writ of Certiorari, the petitioner was denied the right to be seated and to participate as a delegate for the Canton Society by reason of the Constitution and By-Laws of the Union & League which provide that suspended officers could not be delegates.

A letter was sent in compliance with Article II, Section 9, page 18 of the Constitution and By-Laws of the Union & League, which provides in part:

> "It is the duty of member societies to report the names of their newly elected delegates to the central offices within seven days from the date of their election.
>
> In case the newly elected delegates are not qualified in conformity with the By-Laws of the organiza-

tion, the Secretary shall immediately notify the member society to proceed with a new election.

Failing to comply with this request shall have the effect of eliminating the member societies representation at the convention."

Petitioner states on page 13 of Petition of Writ of Certiorari at the top that he was never notified that the convention or any other body was going to proceed against him as an individual member. The record below will show that he was present at the convention, that he refused to go before the Grievance Committee to present his case and that he did appear before the convention at Lorain, Ohio in September, 1952 and represented the Canton Society and himself.

Further that the Petitioner caused such a disturbance during the convention that he was asked to leave. Upon his refusal to do so he was escorted out of the convention hall.

To further aid the court in this matter, Respondents present the following condensed chronological statement of operative facts:

1902	Carpatina Society founded and incorporated.
1906-8	Union & League founded and incorporated.
	Canton Society founded and incorporated.
1910	Carpatina Society joins the Union & League as a subordinate lodge or society.
1939	At Union & League convention at Cleveland, Union & League By-Laws amended.
Sept. 1948	At Union & League convention at Youngstown first change of Union & League officers in twenty years effected;

resolution authorizing the use of a loyalty affidavit was unanimously approved (R. 135, 136, 767); the Canton and Carpatina Societies and the Petitioner were present and represented.

Nov. 1948 — Officers and general counsel of Union & League drafted a loyalty affidavit (R. 945) and sent same to all subordinate societies to be executed and returned within seven days in accordance with by-laws Art. II, Sec. 13 p. 19 (R. 943). Canton Society returned its affidavits duly executed.

March 1949 — After numerous requests, Carpatina Society returned its affidavits duly executed. No disciplinary action taken by Union & League for delay.

Aug. 1949 — After due notice and opportunity to be heard at the Executive Committee hearing, Carpatina Society and Canton Society suspended for refusal to take in new members, and failure to comply with constitution and by-laws.

Nov. 1949 — Officers and general counsel of Union & League amend form of affidavit so that several officers may sign in one instrument (R. 946) and sent same to all subordinate societies as per 1948, Loyal Resolution. Canton and Carpatina Societies officers duly executed and returned affidavits. Approval of officers of Carpatina Society and Canton Society withheld because of suspension of Societies on charge of refusing to take in new members.

Sept. 1950 — Union & League convention, Windsor, Ontario. Delegates of suspended Carpatina and Canton Societies heard, fined, fines suspended and societies reinstated

to good standing. Resolution adopted to include all employees of Union & League as to affidavit requirement.

Nov. 1950 — Affidavits as per 1949 sent out to, executed by, and returned by all subordinate societies.

March 1951 — After president's report to executive committee that I. W. O. members were infiltrating societies of the Union & League inasmuch as the State of New York was dissolving the I. W. O., the executive committee unanimously adopted two resolutions requiring the loyalty affidavits to be changed pursuant to Art. VII, Sec. 3, p. 36 By-Laws (R. 943).

Nov. 1951 — New affidavits (R. 947) drafted and sent to all subordinate lodges and to all employees.

Dec. 1951 — Carpatina and Canton Societies sent to Union & League home-made affidavits executed by officers and prepared by petitioner, based upon old 1950 form. These societies notified of disapproval by Union & League and requested to send representatives to March 1952 executive committee meeting.

March 1952 — Executive committee meeting attended by representatives of both societies. Representatives would not agree with committee ruling, hence officers of the two societies and the societies were suspended by action of the committee until they would have an opportunity to be heard at the convention.

July 1952 — Union & League officers as per By-Laws notify Carpatina and Canton Society delegates elected to Lorain, Ohio convention 1952, not qualified, must elect new delegates, societies failed to do so.

Sept. 1952 Union & League Convention, Lorain, Ohio. In due course of the order of business of the convention, the representatives of the Carpatina and Canton Societies were given opportunity to present their cases as to suspension. Convention voted to exclude these representatives as delegates. These representatives appeared before and were heard by the Grievance Committee which recommended to the Convention that certain members be suspended, certain excluded and that the societies shall hold an election of officers within sixty days on pain of exclusion. The recommendations of the committee were approved by the convention. At all times herein, since the beginning of 1952, the Petitioner was one of the representatives of the Canton Society. Convention unanimously adopted the current form of affidavit and incorporated into the new by-laws along with explicit power in the executive committee and officers to amend the affidavits, Amended By-Laws, pp. 33, 34, 35 (R. 919).

Oct. 1952 Union & League officers, pursuant to amended by-laws and resolution of convention, upon due notice called meetings for election of officers of both societies. In each instance the meetings were barred to Union & League Officers.

Oct. 1952 Another meeting called at both societies as per above. Canton Society duly elected officers. Carpatina Society elected new officers, Canton officers complied with affidavit requirement immediately as did newly elected Carpatina officers. The old Carpatina society

officers who were under suspension refused to turn over books and premises of society to new officers.

Dec. 1952 — Union & League Carpatina Society filed an action for injunction against suspended officers of the society cause No. 643,431, Common Pleas Court, Cuyahoga County, then, suspended officers of the Society filed cause No. 643,463 against Union & League. Judge Lybarger ordered a meeting on December 14, 1952. Such a meeting was held and officers elected who were under suspension and who continued to refuse to sign affidavit.

The foregoing is the exposition of the facts as shown by the testimony and exhibits, stripped of personal acrimony, the bad feelings and recriminations between the parties and the counsel in the cases below. On the behalf of the Union & League and its officers there is no showing of fraud, collusion or conspiracy in the evidence.

ARGUMENT.

I. THE DECISION OF THE STATE COURT OF APPEALS CORRECTLY HELD THAT THE RESPONDENT HAD THE AUTHORITY AND RIGHT TO REQUIRE THE PETITIONER TO EXECUTE THE REVISED LOYALTY AFFIDAVIT OF 1951, AND THE RIGHT TO EXPEL PETITIONER AND REFUSAL TO EXAMINE BOOKS OF RESPONDENT.

The Union & League regards the matters in question in this litigation to be confined to Ohio statutory and case law referring to fraternal benefit associations and to no other types of associations authorized by statutes other than those appearing in section 3921 of the Revised Code. The cases and interpretations of this chapter and its predecessor have been legion and amply define the rights of litigants such as these.

The issues of this litigation are few and simple, though they may appear at first blush to involve a complexity of subsidiary questions. Devoid of complications, the real issues are two-fold:

A. Did the Union & League have the legal authority to so promulgate and require a loyalty affidavit?

B. Assuming the answer to the first question is in the affirmative, does the refusal to execute such an affidavit under oath warrant disciplinary action against a society or its officers?

A. Did the Union & League Have the Legal Authority to So Promulgate and Require a Loyalty Affidavit?

The legality of the affidavit has several aspects which involve the inherent nature of the affidavit and the method of its adoption.

1. Did the Union & League have the authority to authorize by resolution a loyalty affidavit?

In *Ingram v. National Union et al.* (1906), 17 O. D. 227, 232, affirmed without opinion at 80 O. S. 735, the Court said:

> "The National Union (a beneficial association) is an Ohio Corporation, and therefore we must look to the laws of this State for the purpose of determining what are its powers." (Parentheses ours.)

In this case the court denied an injunction aimed at a new expense fund, saying further at p. 231,

> "But within proper limitations no court will interfere with legislation (of the association) that is properly inferable from the inherent nature of the organization itself." (Parentheses ours.)

Further the court quoted as follows at p. 231:

> "We understand the law to be, that when a person becomes a member of an association of this kind, he becomes subject to the laws, rules and regulations of such association, and that he cannot properly resort to the courts for relief or redress, unless there has been an invasion by the society of some property right of his, as by the breach of some vested contract made with him, or when some act has been done by the society without any authority, which infringes upon some property right of his. That if by the constitution of such association, or the rules and regulations legally adopted by it, any body or judicatory thereof has the clear right to legislate in regard to the interests of such association, or to administer its affairs according to its judgment or discretion, and to alter or change its rules and regulations, the members of the association are bound thereby."

The authority of the Union & League a fraternal benefit association to govern itself is set out in R. C. Section

3921 and its predecessor. R. C. Sec. 3921.02 provides as follows:

> "Any society having a supreme governing or legislative body and subordinate lodges or branches, by whatever name known, into which members are elected, initiated, and admitted in accordance with its conconstitution, laws, rules, regulations, and prescribed ritualistic ceremonies, which subordinate lodges or branches are required by the laws of such society to hold regular or stated meetings at least once in each month, is operating on the lodge system."

The very essence of a fraternal benefit association is its voluntary character and the contractual obligations entered into by its members.

In *Ohio ex rel. Pope v. Castle Excelsior* (1883), 10 W. L. B. 2, the Court held on p. 3:

> "It is the policy of the law to sustain organizations of this character, benevolent societies, it being considered by the courts that they are promotive of good, and for the well being of the citizen. Ordinarily they have a constitution and by-laws for their government, and the courts have held it to be a contract on the part of the member when initiated, that he will submit himself to the rules and regulations and general laws of the order; and where they provide the means whereby a member may seek a redress of his grievances for anything done against him in the order. It has been held by the courts that he assents when he becomes a member, and contracts that he will abide by the decision of the order. In reviewing their proceedings, courts will not judge them nicely where the objection is that there was some irregularity in the mode of procedure, where perhaps the society has not strictly observed the rules of evidence that obtain in civil courts. Nor will the civil courts look into the cause of the complaint on which the member is tried, if it appears that the member was

arraigned for a complaint recognized by the constitution and laws, feeling that it is for the best interests of society and of the party concerned that he should abide by the decision of the order."

The loyalty affidavit is by purpose and provision in conformity with the articles of incorporation of the Union & League (R. 918) which provide in the purpose clause as follows:

4. "It shall likewise establish schools where the Romanians may learn the English language and their duties toward their adoptive country; in short

5. "It shall endeavor at the same time, to make of the Romanians, worthy sons of their illustrious race, and useful citizens of their new country."

Indeed, the constitution of the Union & League provides in Article III, paragraph (b) p. 4 (R. 919):

"To maintain and promote the national sentiment by stimulating love for Romania and loyalty to the United States of America among its members."

In cases with analogous facts, a provision of an association excluding benefits to an insane person was upheld in *Kent v. Odd Fellows* (1885) 14 W. L. B. 237, and in a case involving the requirement that a member be and continue after admission to be a "practical Roman Catholic woman." The court upheld the association provision and exclusion of one who, after admission, has married a divorced man. *Koukolicek vs. Ladies Catholic Benefit Ass'n.* (1912), 41 O. C. C. 312.

If Ohio Courts have held that a religious limitation be a stringent provision in the by-laws of an association, despite the state and national constitution, how can the partisans of the societies herein urge that reaffirmation of loyalty by means of an affidavit is any way violative of a member's rights.

2. Was the loyalty affidavit properly adopted and modified by the Union?

1. The resolution authorizing a loyalty affidavit as unanimously adopted by the 1948 convention is as follows:

> "President, Mr. Stroia, reads Subdivision 1, a resolution from the Society Unirea and Plngarul.
>
> "Subdivision (2). The officers of the Union & League and officers of the societies which compose the Union & League shall be obligated to sign a declaration through which they state that they are not Communists; that they do not belong to any subversive organization which works against the Constitution and laws of the United States of America.
>
> "The motion of Mr. Comanita, seconded by Mr. Barber, is voted upon and is unanimously approved, resolving that the Union & League shall print the forms of the declaration." (R. 135, 136.)

2. Under the constitution and by-laws of the Union & League, the executive committee has the following powers pursuant to Article VII, Sec. 3, pp. 51, 52 (R. 919):

> "The regular convention shall be the legislative and governing body of the Union & League and is vested with full power and authority to make, alter, repeal or amend the constitution, by-laws and all laws, rules, and regulations for the government, management, discipline and control of the organization, or of any member society.
>
> "* * * When the convention is not in session said supreme authority shall be vested in and exercised by the executive committee except where otherwise provided in this constitution and by-laws."

This provision of the constitution and by-laws has been approved by the Superintendent of Insurance of Ohio pursuant to R. C. Sec. 3921.27 and its predecessor for many years before these presents.

The inescapable conclusion is that the loyalty affidavit and its revisions are authorized by the organic acts and laws of the Union & League.

3. The Loyalty affidavit in its original form was signed by all the 74 societies branch, including these here complaining, in the years 1949 and 1950. At this late date, they would seem to be estopped from objecting to the principle. Indeed, the testimony gives no basis for such objection. Nor did the two societies object to the changes in form made in 1949 and the resolution of the 1950 convention to include employees thereunder. Their first real objection appears after November 1951 when the affidavit was modified.

4. What, then, are the 1951 changes? In the first three sections the words "nor have I been" were added to the words "am not" so as to add the past to the present context in order to bar past members of the now defunct I. W. O. who otherwise could sign the present tense of the old affidavit with impunity. The testimony shows no vociferous objections to these first three changes, and the litigants on behalf of the societies seemed satisfied with them.

The second three sections of the affidavit are substance new to this instrument, but nonetheless, substance which is provided for in the Constitution and by-laws which the members swore to uphold in practically identical words. Article IV, Sec. 6, pp. 30, 31 (R. 919). This article has been in effect since before 1939. The pleadings show that the complaining litigants on behalf of the societies admit that by the constitutions and by-laws of those societies an applicant for membership contracts and swears to uphold the constitution and by-laws of the Union & League.

Of the last three, or new, provisions of the affidavits, the only one shown to be controversial by the evidence is that referring to "moral turpitude." On page 9 of the Journal Entry of the trial court, the judge finds it "fantastic" that an attorney who is also a litigant and the advisor of the society is incapable of explaining the term to his clients and colleagues.

5. The attitude of the Union & League is that the only affidavit in question in these actions is that of 1951. The law and facts show that it was properly authorized and revised. To add further strength it was specifically resolved in the 1952 Convention.

3. The present litigation is based upon the affidavit in effect since the 1952 Convention.

The societies cannot complain of the validity of this affidavit by reason of their exclusion from the convention, as such action was pursued in a democratic manner in conformance with the laws of the State and the Union & League. If their exclusion would de deemed to invalidate the affidavit, then there would be no basis at all for a democratic process in the Union & League. 29 *O. Jur.* pp. 241, 242. As long as the litigants on behalf of the societies seek inclusion and enjoy the benefits of the Union & League, they must be bound by its actions. Consider that 72 out of the original 74 societies unanimously adopted the revision.

B. Assuming the Answer to the First Issue is in the Affirmative, Does the Refusal to Execute Such an Affidavit Under Oath Warrant Disciplinary Action Against a Society or Its Officers?

The leading Ohio case on the second issue is *Hershiser v. Williams* (1892), 6 O. C. C. 147, affirmed without opinion 53 O. S. 663. This case is on "all fours" with the one at bar. The suit was to enjoin expulsion from a fraternal benefit association, alleging conspiracy to prevent the petitioners from voting. They had been accused because they had joined another lodge and sought to enjoin their own trial. The court upheld defendant's demurrer, saying the equity will not interfere. Many other cases upholding these principles will be found in 29 *O. Jur.* p. 222 *et seq.*

In *Ohio ex rel. Pope v. Castle Excelsior* (1883), 10 W. L. B. 2, the court refused to give effect to an expelled member's benefits, saying on p. 2:

> "There may have been slight irregularities (in the hearing and trial), but if there were any irregularities, they were not prejudicial to him but rather in his interest." (parentheses ours.)

In *Kent v. Odd Fellows* (1885), 14 W. L. B. 237, the foregoing principle was given effect by these words at p. 239:

> "Upon that point I think the authorities all agree that the adjudications of the Order itself are final, and of course, the law will not intervene to set them aside, for more irregularities or errors of judgment in the proceedings where they have acquired jurisdiction of the person and have jurisdiction of the subject matter, and are acting within the scope of their authority."

The objections to the substance of the revised affidavit set out in the amended petition of the litigants for the society are without force and unsupported by evidence.

The best evidence in cause No. 641,088 filed in the lower court by Petitioner is the unverified 1952 form affidavit which he himself offered in evidence and was duly received therein (R. 827, 828, 829, 830, 831, 990). This development of the evidence reduces him to the same position as the other individual litigants on behalf of the societies. As an expelled member who refused to sign the affidavit, he is not entitled to any of the rights of membership. Besides, he is further subject to R. C. 3921.32 and its predecessor which confers the right to inspect books of fraternal benefit associations on the Superintendent of Insurance.

On the basis of the above facts and law, the Common Pleas Court of Cuyahoga County, the Court of Appeals, Eighth Judicial District, State of Ohio, Cuyahoga County upheld the right of the Respondents to proceed as they did requiring the signing of the December 1951 Loyalty affidavits and the right to expel petitioner Novak Marku as a member and of his society and cancel his benefit certificate or policy. (He was tendered the cash surrender value of his policy but refused to accept it.)

The record is clear that the petitioner Novak Marku was given every opportunity to present his side of the story, before the Executive Committees since 1948 up to and including the Lorain Convention of 1952 concerning various violations of the Constitution, by-laws and regulations.

It is a well established matter of law that a member of an organization such as the Union & League is bound by the constitution, by-laws and the rules and regulations.

> "Members are bound by principle and rules of government of the policy which they have adopted or may adopt." *Hershiser v. Williams* (1892), 11 O. Dec. Rep. 76; 53 O. S. 663, 44 N. E. 1138.

Petitioner has raised the question of the mode of procedure in his matter. We contend that the evidence presented to the court has been clear and not rebutted, that an accused member or society has a right to appeal to the executive committee as provided in the Union & League by-laws, Article VI, Section 3, paragraph d which provides as to duties of Executive Committee.

> "d—Receive and consider all the appeals and claims of the members and of the member societies and resolve them in conformity with the provisions specified in the constitution and by-laws."

If the member or member society is not satisfied with the judgment of the Executive Committee, he or they may appeal to the convention. This, the petitioner has done in all instances so that each Executive Committee and convention, he appeared before, had jurisdiction over him as a member and therefore could make valid rulings as to his status as a member in conformity with the constitution and by-laws of the Union & League. We might add that at no time during this litigation has the petitioner declared that he was denied any rights under the existing constitution and by-laws of the Union & League and which he has sworn to be governed by when he became a member.

Article III, Section 3 of the By-Laws provide:

> "Section 3: The regular convention *shall be the legislative and governing body of the U. & L. R. S. A. Inc.* and is vested *with full power and authority to make, alter, repeal or amend the constitution, by-laws and all laws, rules and regulations* for the government, management, discipline and control of the organization, or of any member society. When in session it shall possess jurisdiction *over all member societies and members* and shall have power to enforce the laws, rules and regulations *enacted by the said convention or any regulation or order made by the execu-*

tive committee; it shall decide upon and punish by *penalty, fine,* passivity or expulsion, those found guilty of violating the constitution, by-laws or insurance laws; and it shall have the power to do and perform any and all other acts and things by it deemed essential to the welfare and perpetuity of the organization. When the convention is not in session said supreme authority shall be vested in and exercised by the executive committee except where otherwise provided in this constitution and by-laws." (Italics ours.)

This has been the procedure since the founding of the organization since 1908:

"Where the articles of association are silent as to the mode of proceedings to expel a member, the society is left to adopt its own mode." *Shaefer vs. Aurora Relief Soc.* (1877), 7 O. Dec. 334, 2 W. L. B. 125.

"The court said that it was not necessary to require the corporation to specify by its rules or by-laws every act which could be made the basis of expulsion for that would be unreasonable and impracticable; that it would be impossible for any organization such as a social or fraternal club or any club to continue its existence and carry out its purposes under such requirements." *Cheney vs. Ketcham* (1898), 15 N. P. 139; 7 O. D. 183.

Along these same lines it was necessary for the defendant corporation, the Union & League, to expel the Petitioner, Novak N. Marku, for from the first executive committee directive in 1949 to the fifth day of September, 1952, at the Lorain Convention the plaintiff would not comply and insisted upon changing the rules to suit his own purposes in that he did not want to go by the procedure established. The Petitioner insisted that the Respondent, the Union & League, had to accept the officers he wanted, had to accept the false affidavit of which he was the author, and that the convention had to proceed in the hearing of

his case in the manner in which he determined and not by the constitution, by-laws, rules and regulations of the Union & League.

Therefore, it is within the power of a fraternal society to discipline, fine and expel its members for their conduct in the affairs of the organization where there was sufficient cause and we contend that there was such sufficient cause for the Respondent, the Union & League, at its 1952 convention to expel the Petitioner, Novak N. Marku.

"Inherent power exists in corporation not for profit to discipline and expel members for sufficient cause when necessary to the good order and government of the corporate body." 35 *O. Jur.* 331.

"Inherent power exists in a corporation not for profit, incident and necessary to its very existence for the purpose for which it was created, to discipline or expel one of its members for sufficient cause." *Cheney v. Ketcham* (1898), 5 O. N. P., 139; 7 O. D. 183; 10 *O. Jur.* 1133.

"When it is necessary to the good order and government of the corporate body." *Shaefer vs. Aurora Relief Soc.* (1877), 7 O. D. Rep. 334. 2 W. L. B. 125.

"Speaking generally, the internal government and management of the affairs of a mutual benefit society are immune from judicial interference, or as otherwise stated the courts will not interfere in the affairs of benevolent and beneficial associations when question or discipline, doctrine, or internal policy alone are involved." *Myers vs. Jenkins* (1900), 63 O. S. 101; 57 N. E. 1089; 81 A. Lit. Rep. 613; 19 *Ruling Case Law* 1225—No. 38.

"Accordingly in all matters of policy discipline or the internal economy of the organization the rules by which the members have agreed to be governed constitute the charter of their rights and the courts will decline ordinarily, to take cognizance of any matter arising with reference thereto but will leave all such

questions to be settled in the manner pointed out by the regulations of the order." 10 *Ruling Case Law* 1224—No. 37.

"The principle that equity will not take cognizance of political issues applies also to rights asserted under the constitution and rules of voluntary associations such as fraternal orders so long as the internal laws of the body are observed." 16 *O. Jur.* 205.

"Nor will a court of equity interpret the organization law, ordinances, and by-laws or a mutual benefit society, to ascertain the degree of conformity of the subordinate bodies to the parent body, and specifically to restrain and direct the officers and agents of such subordinate bodies in the performance of the duties devolved upon them as such. This would amount to the administration of their internal affairs, and there is no warrant for such an interference by the equity courts. So, as a general rule, whenever matters of complaint relating to the internal management of an association, or matters of economy about which honest men differ, come up before them, the courts are slow to grant relief, and never interfere, unless the testimony is of a character to indicate either fraud in management, or bad faith, justifying equitable interference. Likewise, a court of equity will not interfere with the management of a benevolent or protective society, unless the managing officers are acting in excess of their corporate power, or that collusion or fraud is alleged." *Ingram vs. National Union et al.* (1906), 2 Am. L. Rec. 589; 80 O. S. 735; 89 N. E. 1121.

"Where a society, in the exercise of its power, has expelled or is about to expel a member for misconduct, the civil courts will not entertain jurisdiction to prevent the expulsion, or reinstate the expelled member. The alleged irregularity by the lodge or its proper officers in the exercise of its power of expulsion does not give the court jurisdiction. Yet it does not follow that the courts will not prevent such expulsion by in-

junction where property rights are involved." *Evans vs. Supreme Council* (1918), 1 A. L. R. 169.

"The doctrine that a society whether incorporated or not organized for religious, fraternal or social purposes has the power to expel one or more of its members for conduct detrimental to it is fully sustained by the adjudications and is supported by reason. Indeed the doctrine is essentially necessary for the welfare of the society and that it may accomplish the objects for which it was organized." *Hershiser vs. Williams* (1892), 60 O. C. C. 147; 53 O. S. 663; 44 N. E. 1138.

"Supreme lodge has power to alter, amend, or abrogate the laws and has exclusive jurisdiction as to all matters pertaining to the welfare of the order." *Steuve vs. Grand Lodge* (1891), 5 O. C. C. 471; 3 O. C. D. 231.

"The right of a member of a charitable, benevolent, beneficial and social organization to any aid and assistance furnished by the same is lost by the termination of his membership, which may be forfeited by misconduct, and upon becoming a member of any such organization, one member subjects himself to its powers as for instance the power of expulsion, such power having been voluntarily conferred upon it by its members and such person is presumed to know the nature and character of the disciplinary powers over all its members, and by becoming a member of such organization one does not acquire a severable right to any of its property, but merely the right of a member so long as he remains a member." *Hershiser v. Williams* (1892), 11 O. Dec. Rep. 76; affirmed, 53 O. S. 663.

It is the contention of the Respondents that the Petitioner has not been denied any rights as a member of the Union & League which he himself has not denied himself.

Under the Constitution and By-Laws of the Union & League the laws and constitution of the State of Ohio and of the United States, the petitioner has been denied no rights, excepting those he has denied himself by his own conduct, by arbitrarily resisting the decisions of the executive committees and conventions.

The Court of Appeals sustained the lower court in finding that the petitioner was expelled by reason of his own conduct in committing the various infractions of the constitution and by-laws of the Union & League and that he was justly punished as so provided.

There is no debatable constitutional question involved, in that the petitioner was a member of a private fraternal benefit and insurance association organized under authority of the laws of the State of Ohio governing fraternal benefit associations which empowered it to govern itself and its members. (R. C. Chapter 3921.)

Surely the Union & League had the power through its legislative bodies to enact those laws which will not endanger the very existence of the organization and which authority it has by reason of its constitution, by-laws and regulations to bind its members as to any changes made in conformity therewith and which the member must obey if he desires to remain and enjoy the benefits of membership in the organization.

> "When it is said that a by-law is binding, all that is ordinarily meant is that a member must obey it or submit to the penalties prescribed for its violations culminating in temporary or permanent exclusion from the privilege of membership." 69 Am. Dec. 673, 19 R. C. L. 1199.
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> "They are obligatory on him only so long as he chooses to recognize their authority." 71 Am. Dec. 625.

"But to escape their control he must withdraw from the association if the latter refused to repeal the obnoxious measure." 69 Am. Dec. 673, 19 R. C. L. 1199.

There has been no claim that the membership or its legally constituted representative body, the Executive Committee or the Convention, did not legally vote and approve the loyalty affidavit.

On page 19 of Petitioner's Writ of Certiorari reference is made to the case of

"*Robert M. Wieman et al. vs. Paul W. Updegraff* (1952), *et al.*, 344 U. S. 183 (1952) on appeal from the Supreme Court of Oklahoma with reference to loyalty oaths which were required of teachers by the State of Oklahoma."

This case has no application to the case at bar, because the decision refers to the right of whether or not the State can make restrictions and requirements as to loyalty oaths which would be contrary to the 14th Amendment of the United States and which restricts the power of the States to make such restrictions and requirements. In the matter before this Court we have the Respondent, the Union & League which is a non-profit corporation, a voluntary fraternal benefit association authorized by specific statute of the State of Ohio to issue insurance policies for the mutual benefit of its members, and by which it contracts with its members to be governed by a constitution, by-laws and regulations and future amendments which may be made for the mutual benefit of all its membership and in carrying out the purpose of its organization. Therefore, individuals and societies, by becoming members of the Union & League contract and agree by and through its legislative bodies, the convention, and when the convention is not in session the Ex-

ecutive Committee which may pass such by-laws and regulations binding upon the members and member societies which are not contrary to the constitution, by-laws and regulations of the organization. All of which rights are guaranteed by Article II, Section 28 of the Ohio Constitution and the 14th Amendment of the United States Constitution, wherein no laws shall be made impairing the obligation of contracts.

CONCLUSION.

In conclusion, it is Respondent's contention that throughout the difficulties with the Carpatina and Canton Lodges and the Petitioner, Novak Marku, and counsel, John R. Vintilla, the national officers, the Executive Committees and the conventions of the Respondent, the Union & League since 1948 to 1952, acted in complete conformity and spirit of and with the Articles of Incorporation, the Constitution, By-Laws and the rules and regulations of the Union & League, the Constitutions of the State of Ohio and of the United States and that the Petitioner, Novak Marku, has not and has, therefore, broken his contract with the Respondent, the Union & League, as a member.

> "It is the policy of the law to sustain benevolent societies, it being considered by the courts that they are promotive of good and for the well being of the citizen. Ordinarily, they have a constitution and by-laws for their government, and the courts have held it to be a contract on the part of the member, when initiated, that he will submit himself to the rules, regulations, and general laws of the order, and where they provide the means whereby a member may seek a redress of his grievances for anything done against him in the order. It has been held by the courts that he assents thereto when he becomes a member, and

> contracts that he will abide by the decision of the order. In reviewing their proceedings, the courts will not judge them nicely where the objection is that there was some irregularity in the mode of procedure, where perhaps the society has not strictly observed the rules of evidence that obtain in civil courts. Nor will the civil courts look into the cause of the complaint on which the member is tried, if it appears that the member was arraigned for a complaint recognized by the constitution and laws, since it deems that it is for the best interests of the society and the party concerned that he should abide by the decision of the order." *Ohio ex rel. Pope vs. Castle Excelsior* (1883), 10 W. L. B. 2, 3.

The petitioner has made some comment in his Application for a Writ of Certiorari as to the dissatisfaction of members and the progress being made by the respondents, the Union & League. We wish to state in reply to this inference that since 1948 to the present time there has been an increase in the membership of over 2,000 members and that for the first quarter of 1955 over a quarter of a million dollars in new insurance policies has been written, which is a great advancement for this small organization now totaling nearly 6,000 members.

On the basis of the record and the law, the decisions of the State Court of Appeals and the Supreme Court of the State of Ohio should be affirmed and this petition for a Writ of Certiorari be denied.

Respectfully submitted,

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